

REMARKS

Claims 1-22 and 43-51 presently appear in this case. All of the claims have been subject to restriction and election requirements. No claims have yet been examined on the merits. The official action of July 2, 2008, has now been carefully studied. Reconsideration and withdrawal of the restriction requirement and prompt examination and allowance of all of the claims now present in the case are respectfully urged.

The present communication is responsive to the official action of July 2, 2008. Applicant's replies of August 4, 2008, and November 3, 2008, were both considered non-responsive to the prior restriction requirement because of inadvertent omissions. Accordingly, it is requested that both of said prior communications be disregarded and that the present communication be considered as the sole response, which is fully responsive to the restriction requirement of July 2, 2008.

The examiner states that the present application contains the following inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1:

Group I including claims 1-22 drawn to peptides, active fragments, derivatives, analogs and salts thereof; and

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Group II including claims 43-51 drawn to methods of contacting/administering peptides, active fragments, derivatives, analogs and salts thereof. This requirement is respectfully traversed.

In order to be responsive, applicant hereby elects Group I, presently including claims 1-22, with traverse and without prejudice.

The examiner takes the position that unity of invention is destroyed by Gerber et al (*JMB* 2002, 322:491-495), hereinafter Gerber. The examiner states that Gerber teaches that glycophorin A is a transmembrane protein and that Gerber teaches peptides that correspond to the transmembrane domain of glycophorin A. The examiner indicates that Gerber teaches all D-amino acid versions of the peptides, which allegedly meet the limitations of claim 1 of the instant application since an all D-amino acid version is a derivative/analog of a peptide which has L-amino acids at particular residues. The examiner thus concludes that the technical features of the present invention are not a contribution over the prior art.

Applicant respectfully disagrees, it being noted that the present claims are directed **only** to diastereomeric peptides (see, for example, paragraphs [0011] through [0013] of the published version of the present application, US

2008/0096809). The present invention further discloses that while it was believed, prior to the filing of the present application, that the recognition between a transmembrane domain of a membrane protein and a peptide within the cell membrane is dependent upon the secondary structure of both the protein and the peptide, the present invention discloses unexpectedly that this requirement is not essential as diastereomeric peptides which correspond to a fragment of a transmembrane domain of a membrane protein do interact with the transmembrane domain of membrane proteins (see paragraph [0014] of the published application).

Moreover, the present application explicitly lists the advantages of diastereomeric peptides over all L-amino acid peptides and all D-amino acid peptides (see paragraph [0015] of the published application). In contrast, Gerber discloses all D-amino acid peptides. Gerber does not disclose diastereomeric peptides. Thus, applicant respectfully disagrees with the Examiner's statement that the technical features of the present invention are not a contribution over the prior art.

In order to make it explicit that the fragments and derivatives are also diastereomeric, claim 1 has now been amended to so state. This had already been implicit in the claim as it was already required that such fragments and

derivates be diastereomeric in view of the language of the preamble of the claim. In any event, it should now be clear, particularly as presently amended, that Gerber does not destroy unity of invention and Groups I and II do relate to a single general inventive concept under PCT Rule 13.1 because they share the same corresponding special technical features per PCT Rule 13.2. Accordingly, reconsideration and withdrawal of the requirement is in order and is respectfully requested.

The PTO has also required applicant to elect a single peptide species. Applicant hereby provisionally elects the diastereomeric peptide of SEQ ID. NO: 23. The claims that read on this elected species are claims 1-3 and 18-22.

Claims 1-3 are clearly generic claims. Claim 18 is generic to claim 19 as claim 19 depends from claim 18. Claim 19 specifies that the peptide **comprises** the amino acid sequence set forth in SEQ ID. NO: 20. As the amino acid of SEQ ID. NO: 23 comprises that of SEQ ID. NO: 20 but adds at least one positively charged amino acid at the amino and carboxy termini, claim 19 reads on the elected species. Similarly, claim 20 reads on the elected species as it comprises at least one positively charged amino acid at the amino and carboxy termini as are present in SEQ ID. NO: 23. Claim 21 reads on the species because it specifically claims

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SEQ ID. NO: 23. Claim 22 reads on the elected species as the examiner has included the composition with Group 1 and the compounds included in such composition include the elected species.

Accordingly, the present amendment is fully responsive to the Official Action of July 2, 2008. Reconsideration and withdrawal of the restriction requirement and prompt examination and allowance of all of the claims now present in the case are earnestly solicited.

Respectfully submitted,

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